

FILED BY bby D.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TN MEMPHIS

HOME DESIGN SERVICES, INC.,)
vs.)
Plaintiff,)
SPARKMAN HOME BUILDERS,)
et al.,)
Defendants.)
Civ. No. 03-2709-D/P

ORDER GRANTING PLAINTIFF'S MOTION FOR PROTECTIVE ORDER

Before the court is plaintiff Home Design Services, Inc.'s ("Home Design") Motion for Telephonic Case Management Conference and Motion for Protective Order, filed August 12, 2005 (dkt #70). In its motion, the plaintiff requests that the deposition of Home Design's president, James E. Zirkel, be postponed until after he completes his chemotherapy treatment for Hepatitis C. On August 12, the defendants filed their response in opposition. On September 1, 2005, the court held an expedited telephonic hearing on plaintiff's motion. Counsel for all interested parties were heard. At the conclusion of the hearing, the court ordered the plaintiff to submit an affidavit or declaration from Mr. Zirkel's treating physician explaining his current health conditions and the affect of his chemotherapy treatment on his ability to participate in legal proceedings, including his deposition.

This document entered on the docket sheet in compliance
with Rule 58 and, 79(a), LCP on 09/07/05

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On September 6, 2005, the court received the declaration of Dr. Talal E. Hilal, Mr. Zirkel's treating physician. In his declaration, Dr. Hilal states that Mr. Zirkel is undergoing a form of chemotherapy for Hepatitis C, and that the treatment is "serious and debilitating." Dr. Hilal further states that Mr. Zirkel "is expected to make a full recovery at the end of his treatment. Until that time, my medical opinion is that he is not competent physically or mentally to participate in any legal proceedings."

Based on the declaration of Dr. Hilal, the court finds that there is good cause to GRANT plaintiff's motion and postpone Mr. Zirkel's supplemental deposition, which was ordered pursuant to this court's July 26, 2005 order granting in part defendants' motion to take supplemental depositions, until after Mr. Zirkel completes his chemotherapy treatment in November or December 2005. Within thirty days after the completion of his treatment, the defendants shall complete the supplemental deposition of Mr. Zirkel in Memphis, Tennessee.

Furthermore, all parties shall have until December 30, 2005, to file new dispositive motions or supplement existing dispositive motions.

Finally, the District Judge will notify the parties of the new trial date.

IT IS SO ORDERED.



TU M. PHAM

United States Magistrate Judge

September 7, 2005

Date



Notice of Distribution

This notice confirms a copy of the document docketed as number 75 in case 2:03-CV-02709 was distributed by fax, mail, or direct printing on September 9, 2005 to the parties listed.

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Honorable Bernice Donald
US DISTRICT COURT